

**In the Matter of:**

## ORDER INVOKING THIRD PARTY AGREEMENT

On December 7, 1984, Grayson RECC, which provides power to the plants in Carter County (Blueberry Hills) and Greenup County (Alpine Village), notified the Commission that the Blueberry

<sup>1</sup> Rockdale Development Company, Inc., No. 84-53.

Hills plant continues to be in arrears to Grayson RECC for power supplied since September 12, 1984. Since termination of electric service to the plant would create serious health hazards to the residents of the subdivision, immediate arrangements must be made by Blueberry Hills with Grayson RECC for payment of the past due account.

As a requirement for receiving its certificate to operate from the Commission, Rockdale was required to negotiate and file a valid third party beneficiary agreement providing for the operation of the plant by the third party in the event of default or abandonment by Rockdale. The third party (or "representative" under the terms of the agreement) is the First Bank & Trust Company of Ashland, Kentucky.<sup>2</sup> Section 4.01 of the third party agreement states in relevant part as follows:

Upon any material and continuing default by the Company [Rockdale] in complying with the requirements of this Agreement for the operation and maintenance of the CDS Facility...the Representative [bank] shall have...duty to take possession of the CDS Facility and operate it in accordance with this Agreement.... [Bracketed material supplied.]<sup>3</sup>

Having considered this matter and being advised, the Commission finds that there has been a "material and continuing default" by Rockdale in its operation of the Blueberry Hills sewage plant and that, under the terms of the third party agreement, the First Bank & Trust Company should now take over and

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<sup>2</sup> The bank's name was "Second National Bank" at the time the agreement was negotiated on December 21, 1978.

<sup>3</sup> A complete copy of the December 21, 1978, agreement is attached hereto for the bank's reference.

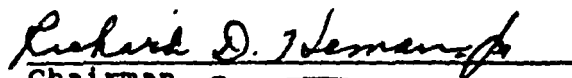
operate the plant in order to protect the health and safety of the 35 customers served by the plant.

IT IS THEREFORE ORDERED that the First Bank & Trust Company of Ashland, Kentucky, shall immediately take over the operation and maintenance of the sewage treatment facilities serving the Blueberry Hills subdivision in Carter County, Kentucky.

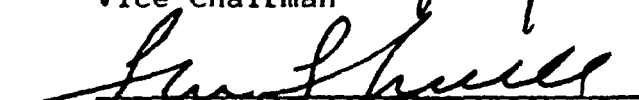
IT IS FURTHER ORDERED that within 30 days from the date of this Order, the First Bank & Trust Company shall file a report with this Commission outlining the arrangements it has made with Grayson RECC regarding the continuation of electric service to the Blueberry Hills sewage plant.

Done at Frankfort, Kentucky, this 31st day of January, 1985.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary

APPENDIX "A"

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE  
COMMISSION IN CASE NO. 9264 DATED January 31, 1985.

SEWER TREATMENT PLANT THIRD PARTY AGREEMENT

This SEWER TREATMENT PLANT THIRD PARTY AGREEMENT ("agreement") made and entered into at Ashland Kentucky, this 20<sup>th</sup> day of December, 1978, by and between Real Development Company, Inc., a Kentucky corporation, with its principal office and place of business at P. O. Box 927, Ashland, Kentucky 41101 ("Company"), and Second National Bank a Kentucky bank corporation, Ashland, Kentucky ("Representative").

**WITNESSETH:**

WHEREAS, (1) Company is the owner of certain real estate and improvements thereon, upon which it intends to construct a collective and disposal system (which includes a sewage collection and disposal plant ("CDS Plant") and all fixtures, appurtenances, connections thereto, a main trunk line and lateral sewerage stations, force mains and all other parts of the collection and effluent lines to the point of final disposal, easements appurtenant to the ownership and operation of the system and all tangible property presently used in connection therewith), herein collectively called "CDS Facility", which it acquired by deed dated September 1978, from Mannie Gibbs (Seller

(2) The rates, services and operation of the CDS Facility have been placed by law under the jurisdiction of the Public Service Commission of Kentucky ("Commission") which is a regulatory body with power to fix rates and to which a consumer may seek redress

(3) The Commission has requested the Company to enter into this Agreement with a Representative to which the Representative has agreed.

NOW, THEREFORE, in consideration of the premises and to comply with the requirements of the Commission and in reliance on this Agreement by the Representative and present and future owners and occupants of properties to be served by the CDS Facility and mortgagees who may make and hold mortgage loans on the Properties and any governmental agencies which may insure or guarantee such loans, the Company and Representative hereby agree as follows:

Section 1: The Representative. This Agreement is made by the Representative in its individual capacity and as the Representative of and for the benefit of all present and future owners and occupants of each of the Properties which are now or may hereafter be served by the CDS Facility and as the Representative of all present and future holders of mortgages on such Properties and any governmental agencies which insure or guarantee such loans (herein collectively called "Third Party Beneficiaries").

1.01 Action by Representative. Any Third Party Beneficiary (a) served by the CDS Facility or (B) holding or guaranteeing or insuring any mortgage on any Property connected to and served by the CDS Facility is hereby granted the right and privilege to request the Representative on his, her, its or their behalf (i) to notify the Company of any default by the Company under this Agreement and to require the Company to remedy such default within the time specified herein, (ii) to notify the Commission of such default and (iii) to take such other action as is contained in such request and provided for herein for the benefit of such Third Party Beneficiary.

Section 2: Covenants by Company. The Company shall provide at all times for each of the Properties adequate, safe and sanitary sewage collection, treatment and disposal service for all domestic sewage from such Properties and shall operate and maintain the CDS Facility in accordance with all applicable rules and

regulations of the Commission and the Kentucky State Board of

**2.01 Maintenance of Records.** The Company will maintain adequate records of any tests relating to the CDS Facility and records shall be open to inspection by the Commission, the Kentucky Board of Health and all Third Party Beneficiaries.

**2.02 Company to Remedy Defaults.** The Company shall at its own cost and expense remedy such defaults in the CDS Facility and make such adjustments, repairs, installations or improvements in the CDS Facility as may be reasonably necessary for the operation of the CDS Facility in accordance with this Agreement or to conform its operations to the lawful and reasonable requirements of the Commission or any other governmental agency having jurisdiction over its operations.

**Section 3: Rates.** The Company expressly reserves the continuing right (a) to establish and collect such charges and charges for sewer services furnished to the owners or occupants of the Properties as shall, from time to time, be authorized or set by the Commission and (b) to maintain, increase, reduce or otherwise alter such rates and the method of collection of sewer service as may be prescribed by or not prohibited by the Commission.

**Section 4: Rights and Duties of Representative.**

**4.01 Rights and Duties on Default by Company.**

Upon any material and continuing default by the Company in compliance with the requirements of this Agreement for the operation and maintenance of the CDS Facility and upon the failure of the Company to remedy such default within thirty (30) days after notice of a default has been received by the Company from the Representative within two (2) days in the event of a complete shut down of the CDS Facility or the suspension of sewer services to the owners or occupants of the Properties), except in cases of disaster, war, riots, insurrections

labor troubles, strikes or other causes beyond the control of the Company in any of which events the provisions of this Section shall not apply, or if Company attempts to collect from users CDS Facility charges in excess of the rate or rates permitted by the Commission, then and in any such event, subject to the provisions hereinabove set forth, the Representative shall have the right and duty to take possession of the CDS Facility and operate it in accordance with this Agreement or the Representative may delegate its operation in accordance with this Agreement to an operator capable of operating it as contemplated herein; and in any such event the Representative shall have the right and duty to operate, manage and control the CDS Facility for the benefit of the Third Party Parties for whose benefit this Agreement is made and to collect the account and benefit of the Company, subject only to the payment and compensation provisions of Section 4.02, the charges for such sewer services at rates not in excess of those authorized and permitted by the Commission.

4.02 Compensation of Representative. During the p any operation of the CDS Facility by the Representative pursuant to this Agreement, it shall be entitled to be reimbursed for and recover all expenses incurred by it, including reasonable attorney fees, and to such reasonable compensation for its services as approved by the Commission.

Section 5: Rules and Regulations of the Company.

The Company may from time to time establish, amend, alter and reasonable rules and regulations ("Rules and Regulations") for providing sewer services to the Properties served by the CDS Facility provided that such Rules and Regulations shall not violate any laws and regulations formulated by the Commission. Such Rules and Regulations shall be binding upon any owner, occupant or user of any of the Properties and on the user of any services provided by the CDS Facility.

**Section 6: Restoration of Operations to the Company.**

In the event the Representative shall assume and take over the operation of the CDS Facility under the provisions of this Agreement and thereafter the Company shall take such necessary action as may be required to remedy any default by it so that it is in a position to operate the CDS Facility in accordance with this Agreement and applicable rules and regulations of the Commission and is willing to operate the CDS Facility in accordance therewith, at the request of the Company the Representative shall turn over the possession, control and operation of the CDS Facility to the Company to be again operated by the Company under the terms and conditions contained in this Agreement.

**Section 7: Company to Retain Title to CDS Facility.**

Notwithstanding any provision of this Agreement, neither the Representative nor any Third Party Beneficiary or any other person shall have or claim to have any right, title, interest, lien, encumbrance or claim of any kind or character whatsoever in or to the CDS Facility or any properties or facilities of the Company by virtue of this Agreement. The Company may mortgage, lease, encumber, sell or otherwise dispose of all or any part of the CDS Facility without the consent of the Representative or any Third Party Beneficiary.

**Section 9: Notices.** All notices and other communications required or contemplated to be given hereunder by the Company or the Representative shall also be given to the holder of any mortgage on the CDS Facility, shall be in writing, and shall be actually delivered to the other and to the holder of any mortgage on the CDS Facility or shall be mailed, postage prepaid, by first class, certified or registered mail, return receipt requested, to the other and to the holder of any mortgage on the CDS Facility, (and the date of any notice by certified or registered mail shall be deemed to be the date



of certification or registry thereof), delivered or addressed to the parties as follows:

To Purchaser:

Rockdale Development Company, Inc.  
P. O. Box 927  
Ashland, Kentucky 41101  
Attention: Carl Gibbs, President

To Representative:

Second National Bank  
Ashland, Kentucky 41101

Attention: Corporate Trust Department

To Holder of Mortgage:

Attention: Second National Bank of Ashland,

or at such other address or attention such other person or persons as either party or the holder of such mortgage may designate to others by written notice in the manner provided above.

Section 10: Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

Section 11: Duration of Agreement. This Agreement shall remain in full force and effect and for the benefit of all parties mentioned herein so long as the Commission shall have jurisdiction over the operation of the CDS Facility and the establishment of sewerage for the sewage services herein contemplated.

IN WITNESS WHEREOF, Rockdale Development Company, Inc.  
Second National Bank of Ashland, Ky. have caused this Agreement to be duly executed, all as of the day and year first above written

ROCKDALE DEVELOPMENT COMPANY, INC.

By: Carl Gibbs  
President

ATTEST:

Kenneth A. Pickens  
Secretary

Second National Bank of

By: Donald Smith  
President

ATTEST:

Secretary

COMMONWEALTH OF KENTUCKY

COUNTY OF BOYD

The foregoing instrument was acknowledged before me 21 day of December, 1978, by Carl Gibbs, President of Rockdale Development Company, Inc., a Kentucky corporation, on behalf of the corporation.

My commission expires September 1, 1980

Joyce Harner  
Notary Public

COMMONWEALTH OF KENTUCKY

COUNTY OF Boyd

The foregoing instrument was acknowledged before me 21 day of December, 1978, by Donald Smith of Second National Bank of Oakland, a Kentucky corporation, on behalf of the corporation.

My commission expires September 1, 1980

Joyce Harner  
Notary Public